

Additional Terms and Conditions



1. PAYMENT: Network services shall be made available for Customer use only after receipt by Ovation of all applicable charges including but not limited to initial deposit, first and last month service payments, all installation charges and any remaining balance owed. Late Payment Charges will be billed at 1.5% per month of the overdue amount or the maximum lawful rate allowable, whichever is less. Payment is required in advance for replacement equipment and labor. The cost of such replacement equipment will be credited back to Customer when defective equipment is received by Ovation. Payments are not allowed to be withheld by Customer for any reason, including but not limited to the resolution of disputes. If Customer fails to pay its invoice in full within 45 days of the Due Date, Ovation retains the discretion to suspend service. In the event that service is suspended, all amounts due must be fully paid, including a reconnection fee totaling \$75, before Ovation will consider reinitiating service. Customer agrees to pay all costs of collection, including attorney fees, collection agency fees and all other expenses incurred associated with the collection activities. Payment of a Deposit amount is required prior to ordering equipment or scheduling installation, and such Deposit amount is non-refundable.

2. REASONABLE ACCOMODATIONS: Customer shall pay for the expense of reasonable accommodations when Ovation representative(s) are required to stay overnight, for the purpose of installing, or maintaining and testing equipment after installation during the term of this Agreement.

3. PROVISIONED EQUIPMENT: Provisioning of service may require Ovation to install certain equipment at Customer's premise. Customer agrees to pay all shipping charges associated with all equipment and all labor costs in the event the property is not able to self-install the replaced or repaired equipment. If Ovation repairs or replaces equipment that is under warranty, the Customer's current Agreement will automatically extend one (1) additional year onto the term of the existing Agreement at the same terms and conditions, except that Ovation has the discretion to apply the current rates in effect at the time during this additional one-year extension period.

4. REMEDIES. Ovation and Customer recognize that disputes arising under this Agreement are best resolved by parties directly involved. If a dispute is not resolved in non-binding mediation, the parties may take other appropriate actions subject to the terms of this Agreement.

5. RETURN POLICY. (a) When Customer is required to return any Product to Ovation for warranty service, Customer agrees to obtain Ovation's concurrence prior to returning any Product for repair or replacement and must reference any return material authorization ("RMA") number issued by Ovation on documentation accompanying such returned Product. Customer further agrees to ship the item prepaid and suitably packaged to a location designated by Ovation and be responsible for any loss of or damage to the Product while in transit to Ovation. Ovation will return to the Customer any repaired or replaced Products at Customer's sole expense, and Customer is responsible for loss of or damage to, Customer's Product while it is in transit back to Customer. Any returned Product becomes Ovation's property and, subject to Ovation's receipt of the exchanged Product, its replacement becomes Customer's property. The replacement Product may not be new, but will be in working order and equivalent to the item exchanged as determined in good faith by Ovation. The warranty period for any exchanged Product described above shall be the remaining Product warranty period, if any, on the original, returned equipment issued by the applicable equipment manufacturer. Customer agrees to ensure that any returned Product is free of any legal obligations or restrictions that prevent its exchange and represents that all returned Products are genuine and unaltered. When Product under warranty is required to be returned by Customer, Ovation will send Customer the applicable Product and invoice for the replacement Product. Upon receipt by Ovation of the returned Product from Customer, Ovation will issue a credit totaling the invoice amount. If Customer does not return the original Product under warranty within at least 45 days of receiving the replaced Product from Ovation, Customer forfeits the applicable credit.

(b) Returns pre-shipping. If Customer cancels its Agreement prior to Ovation shipping the Product(s), Customer shall receive a credit for the invoice amount minus (a) a Programming Fee totaling fifteen percent (15%) of the invoice amount ,

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plus (b) the initial Deposit that totals one monthly recurring charge, plus (c) all applicable shipping costs, if any, incurred by Ovation imposed by the equipment manufacturer.

(c) Returns post-shipping of Products before Installation. If Customer cancels its Agreement after Ovation has shipped the Product(s) ordered by Customer but before installation is performed by Ovation, Customer shall receive a credit for the invoice amount minus (a) a Programming Fee totaling fifteen percent (15%) of the invoice amount, plus (b) the initial Deposit that totals one monthly recurring charge, plus (c) all applicable shipping costs incurred by Ovation (original and return shipping costs).

(d) Returns post-shipping of Products after Installation. If Customer cancels its Agreement after Ovation has shipped and installed the Product(s) ordered by Customer, Customer shall not be entitled under any circumstances to receive a credit on the return of any Product to Ovation, and Customer shall be responsible to pay the applicable ETC to Ovation.

6. TIME AND MATERIALS. Customer acknowledges that all Time and Material cost quotes in this Agreement are estimates. Ovation will invoice and Customer agrees to pay Ovation for all actual time and materials incurred to install the Products ordered by the Customer. The current rate for an Ovation technician to perform installation work on Customer's premise is \$125 per hour with a minimum service increment of one (1) hour and additional service increments of 30 minutes.

7. ASSIGNMENT. In the event that Customer assigns this Agreement without the express written consent of Ovation, Ovation has the discretion to terminate this Agreement without penalty. For any third party that the Customer assigns this Agreement to after receiving consent from Ovation ("assignee"), such assignee acknowledges and agrees to fulfill and be legally bound by the terms of this Agreement and Customer agrees to remain jointly liable with assignee unless Customer is released by Ovation.

8. ADVERTISING. Ovation may provide and display advertising and other data and information at its sole discretion over its network. Customer shall have the right to notify Ovation to exclude any advertising, data, information or display which is found to be offensive or in violation of this Agreement. Within five (5) business days of receiving such notice, Ovation shall remove any advertising found to be offensive or in violation of this Agreement.

9. OVATION ADDITIONAL SERVICES. Ovation retains the right to shape bandwidth based on the number of Customer guests using the network. For an additional fee, Customer may request that Ovation uncap, thereby increase, the existing bandwidth speed for its guests to speeds available from the Customer's Internet Service Provider.

10. ETC. (a) Services. By way of example for illustrative purposes only, if a Customer terminates the Ovation Agreement for no legal cause after 6 months of a 24-month Term Agreement, and the Ovation pricing is the following:

List price = \$2.25

Sales price = \$1.50

Discount = \$.75

ETC is calculated using the following formula:

\$40.50 (\$2.25 x 18 months remaining under the Agreement)

+ \$ 4.50 (\$.75 Discount x 6 months of service used through date of termination)

\$45 TOTAL ETC

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(b) Equipment. By way of example for illustrative purposes only, if Customer terminates the Ovation Agreement at anytime without legal cause, Customer agrees to pay additional ETC on any equipment purchased from Ovation using the following formula:

List price = \$1,750

Sale price = \$499

Discount = \$1,251

ETC = \$1,251, which is the one-time charge equaling the Discount amount on such equipment.

11. ADVERTISING. Ovation may provide and display advertising and other data and information on or through the Guest PC and/or the Customer's network. Customer shall have the right to request from Ovation exclusion of any advertising, data, information or display that is deemed offensive, as determined in good faith by Ovation, or in violation of this Agreement. Any advertising, data, information or display that Customer objects to and that Ovation deems offensive shall be removed by Ovation from the Guest PC or the Customer's network at each location within five (5) business days after such determination by Ovation. Customer understands that it is receiving reduced rates from Ovation in return for the opportunity to advertise at the Customer's location(s).